

APPEAL NO. 032969  
FILED DECEMBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 22, 2003. The hearing officer determined that the Independent Review Organization's (IRO) decision against the appellant's (claimant) recommended spinal surgery is supported by a preponderance of the evidence. The claimant appeals this determination. The respondent (self-insured) urges affirmance of the hearing officer's decision.

DECISION

Reversed and rendered.

The claimant argues that the IRO's decision was based on MRI findings of another person. The evidence reflects that the self-insured admitted into evidence two MRI reports, one of the right shoulder and one of the cervical spine, which are both dated April 28, 2003. In developing the evidence, both parties referred to these two exhibits and, ultimately, it was discovered that the reports belonged to a different person. The self-insured withdrew these exhibits and the claimant attaches them to her request for review. The hearing officer noted in his Statement of the Evidence "the IRO decision was based upon information provided by the carrier, including an MRI report dated August 14, 2002, and the myelogram of May 30, 2003." The hearing officer determined that the "bulk of the relevant medical evidence presented at the hearing in this matter was available to the IRO reviewer." However, there was no evidence adduced with regard to the information actually provided to the IRO. Additionally, the evidence reflects that the only records specifically referred to in the IRO report are a shoulder MRI, dated April 28, 2003, which was never performed on the claimant, a cervical MRI dated April 28, 2003, which does not belong to the claimant, and a lumbar myelogram CT scan, which was never performed on the claimant because the injured body part was the claimant's cervical spine. It does appear that with regard to the myelogram only, the IRO decision may simply reflect a clerical error in referring to it as a lumbar myelogram instead of a cervical myelogram because the IRO decision goes on to recite the findings contained in the claimant's cervical myelogram report. Because it is apparent that the IRO decision is based, in appreciable part, on the reports of diagnostic studies that were not performed on the claimant, we cannot agree that the IRO decision is supported by a preponderance of the evidence. For this reason, the hearing officer's decision is against the great weight and preponderance of the evidence and requires reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). While there is no explicit authority to order the appointment of a different IRO to review all of the relevant records pertaining *to the claimant* and to render a decision as to whether it concurs with the recommended surgical procedure of the claimant's treating doctor, in the interest of fairness to both parties, they are encouraged to take this action in order to resolve the dispute.

The claimant requests that the Texas Workers' Compensation Commission "conduct an investigation into the medical privacy violation" by the self-insured with regard to the MRI reports belonging to the third party. However, the Appeals Panel is without authority to order or initiate such an investigation.

Finding of Fact Nos. 8 and 9 and Conclusion of Law No. 3 are reversed and a new decision is rendered that the IRO decision against spinal surgery is not supported by a preponderance of the evidence.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is:

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge